UNITED OVERSEAS BANK LTD. v. SIN BIAN SEA TRANSPORT

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Buttrose J.) June 5, 1968]

[Singapore—Federal Court Civil Appeal No. Y42 of 1967]

Landlord and Tenant — Controlled premises — Statutory tenant not in physical possession — Claim for possession against licensee — Statutory tenant not made a party — No order for possession — Control of Rent Ordinance (Cap. 242).

The plaintiffs/appellants were the owners of a rent-controlled premises which had been let to a tenant. In 1947, the tenant had sublet a portion of the premises to a sub-tenant. The respondents were the licensees of the sub-tenant who was not in physical possession of the premises. The tenant was adjudicated a bankrupt in September 1958 and thereupon his contractual tenancy of the premises vested in the Official Assignee. By a notice to quit dated July 31, 1963, the appellants terminated the contractual tenancy of the Official Assignee. On June 9, 1965, they issued a writ of summons against the respondents claiming a declaration that the respondents were trespassers, and an injunction restraining them from further occupying the premises. Alternatively the appellants claimed possession of the premises. The sub-tenant was not made a party to the proceedings. The learned trial judge held that on the facts, the defendants/respondents were not trespassers. As regards the alternative claim for possession it was held that the court was not in a position to adjudicate upon it as the sub-tenant had not been made a party to the action ([1967] 2 M.L.J. 274). In an appeal from this decision, counsel for the appellants contended that a statutory tenant who was not in physical possession of the premises was not protected by the Control of Rent Ordinance.

Held, dismissing the appeal: the court had no jurisdiction to make an order for the recovery of possession against a licensee of a statutory tenant, even though the statutory tenant was not in physical possession of the premises and had no *animus revertendi*, unless the statutory tenant was made a party to the proceedings.

Cases referred to:—

(1) *Brown* v. *Draper* [1944] 1 All E.R. 246.

(2) *Weinberg* v. *Lim Seow Peng* [1955] M.L.J. 152.

(3) *Kassim bin Adam* v. *G.E. Bandukwala* [1958] M.L.J. 226.

(4) *Chartered Bank (Malaya) Trustee Ltd.* v. *Abu Bakar* [1957] M.L.J. 40.

FEDERAL COURT.

K. S. Chung for the appellants.

C. S. Wu for the respondents.

Cur. Adv. Vult.

Tan Ah Tah F.J.: In this case the plaintiffs claim a declaration that the defendants are trespassers of that part of the premises known as No. 6 Bonham Street, Singapore, which is at present occupied by the defendants, and an injunction restraining them from further occupying the said part. Alternatively the plaintiffs claim possession of the said part.

It is not disputed that the premises are subject to the Control of Rent Ordinance (Cap. 242). One V. Mathiaparanam, formerly trading as V. Mathi & Co., was a monthly tenant of the premises from the year 1947. The learned trial judge found that a trade union called the Singapore Lighter Owners' Association (hereinafter referred to as "the association") became the sub-tenant of Mathiaparanam on the 27th September 1947 in respect of that part of the premises which is shaded green in the plan showing the premises which is annexed to the statement of claim. The learned trial judge also found that the defendants became licensees of the association during the year 1947 and in that capacity occupied part of the premises which is shaded green in the plan. It is convenient at this stage to state that in my opinion there is no reason to disturb these findings of the learned trial judge.

On the 19th September 1958 Mathiaparanam was adjudicated a bankrupt and thereupon his contractual tenancy of the premises vested in the Official Assignee. The plaintiffs bought the premises from the previous owners on the 22nd May 1963. They duly determined the Official Assignee's contractual tenancy on the 31st August 1963, by a notice to quit dated the 31st July 1963. On the 9th June 1965 they issued the writ of summons in this action against the defendants.

It was contended by counsel for the plaintiffs in the court below that the defendants were trespassers. The learned trial judge in his judgment reached the conclusion that the defendants were not trespassers and dismissed the claim for a declaration and injunction against the defendants. As regards the alternative claim for possession, the learned trial judge stated that he was not in a position to adjudicate upon it as the association had not been made a party to the action. It is against this judgment that this appeal is brought by the plaintiffs.

In my opinion, on the facts of this case, the association had already become a statutory tenant of the official assignee by the time the writ of summons was issued against the defendants.

It is important to note that there is no evidence whatsoever to show that the associaciation's statutory tenancy has been lawfully determined. This point was not raised in the pleadings nor does it appear to have been argued in the court below.

At this stage, it becomes relevant to refer to *Brown* v. *Draper* [1] in which it was held that in the case of a tenancy protected by the Rent Restriction Acts, the court has no jurisdiction to make an order for possession against a licensee unless the tenant is a party and an order is made against him as well. This case has been followed in Singapore in *Weinberg* v. *Lim Seow Peng* [2] and *Kassim bin Adam* v. *G. E. Bandukwala.* [3]

Counsel for the plaintiffs contends before us that where a statutory tenant is not in possession the court can find as a matter of law that the statutory tenant has lost the protection of

the Control of Rent Ordinance if there is evidence that he is no longer in physical possession of the premises and has no *animus revertendi*, even though the statutory tenant was not a party to the proceedings before the court and he relies on the case of *The Chartered Bank (Malaya) Trustee Ltd.* v. *Abu Bakar* [4] in support of this proposition.

In that case certain premises known as 104 North Bridge Road, Singapore, which were rent-controlled premises, were let by the plaintiff company on a monthly tenancy to the firm of Mohamed Saiboo & Co., which consisted of two partners Mohamed Salih and Abdul Majid. Various changes in the partnership took place and at the time the writ was issued the two partners were Abdul Majid and Abu Bakar, the defendant. Before the writ was issued a notice to quit was served on the original two partners Mohamed Salih and Abdul Majid requiring them to deliver up possession of the premises on the 28th February 1955. The plaintiff company in due course commenced proceedings against the defendant Abu Bakar and in their statement of claim asked for a declaration that "the defendant by his servants or agents or otherwise is not entitled to possession of the premises No. 104 North Bridge Road, Singapore". It was admitted by the defendant that by 1954 Mohamed Salih was no longer a partner of the firm and that in June 1954 Abdul Majid absconded to India owing the partnership and other creditors a considerable sum of money.

On these facts the majority of the Court of Appeal held that the plaintiff company was entitled to the declaration it sought on the ground that the defendant was not the licensee of Abdul Majid and that he could not be deemed to have held over after the determination of the contractual tenancy as Abdul Majid's partner, agent or licensee.

The facts of the present case are clearly different as the learned trial judge has found that the defendants were licensees of the association. In these circumstances, I am of the opinion that, as the association had not been made a party to the proceedings in the court below, the learned trial judge was right in refusing to make an order for possession against the defendants.

For the foregoing reasons I would dismiss the appeal with costs.

Wee Chong Jin C.J. and **Buttrose J.** concurred.

Appeal dismissed.

Solicitors: *Chung & Co.; Donaldson & Burkinshaw.*

SINNADORAI v. NEW ZEALAND INSURANCE CO. LTD.

[O.C.J. (Chang Min Tat J.) June 12, 1968]
[Ipoh — Civil Suit No. 178 of 1968]

Arbitration — Insurance policy providing for arbitration — Stay of proceedings — Arbitration Ordinance, 1950.

Insurance — Judgment obtained by passenger against insured — Liability of insurers to satisfy judgment — Two classes of third parties — Road Traffic Ordinance, 1958, ss. 75(1), 80 & 81(1) — Contracts (Malay States) Ordinance, 1950, s. 2.

A motor vehicle driven by one Idris bin Abdul Hamid (hereinafter called "the insured") was involved in an accident. The insured died. The plaintiff, who was a passenger in that vehicle, sustained injuries. She obtained judgment against the estate of the insured and sought to enforce that judgment against the defendants, who had issued a policy of insurance to the insured in respect of the user of his vehicle. Under the terms of the policy, the defendants undertook to cover the insured against claims by passengers, with the usual provision for arbitration. The defendants applied for a stay of proceedings under the Arbitration Ordinance 1950.

Held: (1) having regard to section 81 of the Road Traffic Ordinance, 1958, the liability of insurers to satisfy a judgment obtained by a passenger against an insured does not arise until the insured, not being a company, becomes a bankrupt or has made a composition arrangement with his creditors. Neither of the latter events having occurred, the plaintiff does not have a cause of action against the defendants.

(2) the arbitration clause in the insurance policy could not be invoked until the insured had been made a bankrupt. Therefore the defendants' application for a stay of proceedings failed.

Cases referred to:—

(1) *Krishna Lal Sadhu & Anor.* v. *Mt. Promila Bala Dasi*, A.I.R. 1928 Cal. 518, 522.

(2) *Smith* v. *Pearl Assurance Co. Ltd.* [1939] 1 All E.R. 95.

(3) *Digby* v. *General Accident, Fire and Life Assurance Corporation Ltd.* [1940] 2 K.B. 226.

CIVIL SUIT.

N. Sharma for the plaintiff.

P. P. Dharmananda for the defendants.

Cur. Adv. Vult.

Chang Min Tat J.: This is an application by the defendants to the action for a stay of proceedings under the provisions of the Arbitration Ordinance 1950.

The circumstances leading to the application are as follows: The plaintiff was at the relevant time a passenger in a motor vehicle driven by one Idris bin Abdul Hamid (hereinafter referred to as "the insured") when the vehicle became involved in an accident and she sustained injuries and suffered damages. The insured died at the accident. Arising therefrom, the plaintiff obtained judgment against the estate of the insured for $8,500 and costs. The costs have not been taxed. There is however a "bullock order"